

## **Remarks**

Claims 20 and 41 have been amended to clarify the invention. In addition, claims 1 and 14 were improperly identified as being "Currently amended" in the September 6, 2006 response. The identifier for claims 1 and 14 has been corrected to read "Previously presented" as the claims were not amended.

The various parts of the Office Action are discussed below under similar headings.

### ***Specification***

The Abstract has been amended to remove the implied language objected to by Examiner. Applicant submits that the Abstract is now written in proper language and format.

### ***Rejections - 35 USC § 101***

Claims 41-46, 52 and 58 were rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter because Examiner determined that the claims positively recited part of the human body. Applicant respectfully disagrees with Examiner.

Examiner cites the following language:

means for securing the inferior implant means to the inferior articular facet  
via a lamina connected to the inferior articular facet

The cited "via a lamina connected to the inferior articular facet" is part of the functional element of the claimed means—not part of the corresponding structure. As such, the language does not positively claim part of a human body and complies with 35 U.S.C. § 101. Applicant respectfully requests that Examiner's rejection be withdrawn.

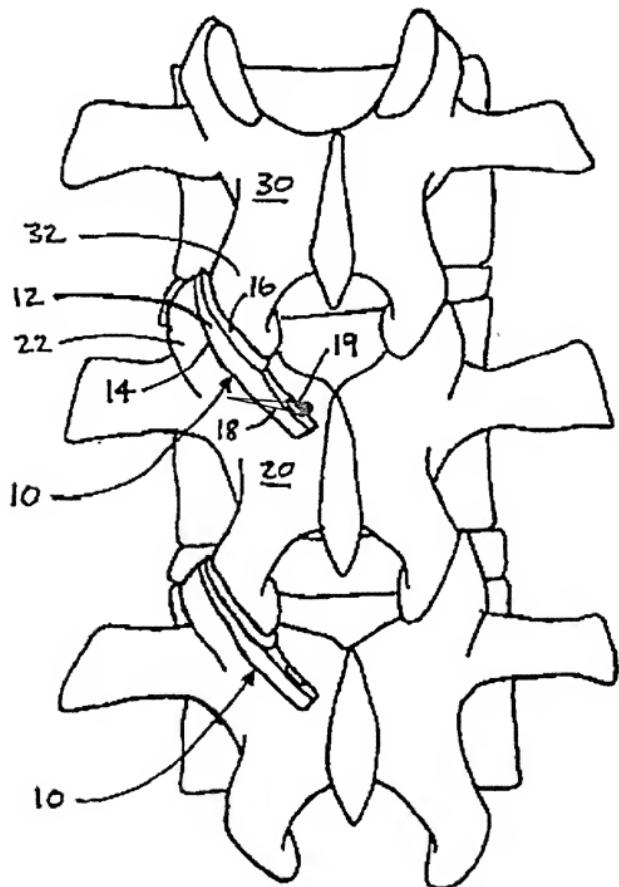
**Rejections - 35 U.S.C. § 102(e)**

Claims 1-2, 4-6, 8-11, 14-17, 19-20, 41-44, 46-49, 51-55 and 57-58 were rejected under 35 U.S.C. § 102(e) as being anticipated by Soboleski et al. (U.S. Publication No. 2002/0151895). Specifically, Soboleski was cited by Examiner as disclosing:

"a superior implant, 14...a inferior implant, 16...and a translaminar fixation mechanism, at 19, for securing the inferior implant to the inferior articular facet (see figures 2 and 3A-F and paragraph 0043)."

It is respectfully submitted that Soboleski does not disclose a superior implant, an inferior implant and a translaminar fixation mechanism as advocated by Examiner. Instead, Soboleski discloses only a single implant configured for attachment to the pedicle.

The disclosed device in Soboleski is a facet cap **10** designed to act as a shim and create space between the superior and inferior facets on one side of a vertebra to correct asymmetry and treat scoliosis. As described in Soboleski, the facet cap **10** has a shim portion **12** with two opposing surfaces, a lower surface **14** and an upper surface **16**. Paragraph 0042. In addition, the implant may also have an alignment portion having an extension or "tongue **18**, having an orifice **19** to accept a screw or the like which is driven into the cortex of the vertebral pedicle." Paragraph 0043. For the Examiner's convenience, Fig. 2 is reproduced to the right showing how a screw would be connected to the cortex of the pedicle, which is roughly located in part along the line pointing to the cap **10**.



Because Soboleski discloses only a single implant, it is submitted that Soboleski does not disclose or even suggest the limitations of the claims of the present application. Applicant respectfully requests that Examiner's rejection be withdrawn.

***Rejections - 35 U.S.C. § 103***

Claims 3, 12 and 13 were rejected under 35 U.S.C. § 103 as being unpatentable over Soboleski. The Examiner reasoned that Soboleski discloses except for the specific superior and inferior implant sizes and angles of interaction with the translaminar fixation mechanism. For the reasons stated above, Soboleski does not teach or suggest the limitations of claim 1 from which claims 3, 12 and 13 depend. It is therefore submitted that Soboleski does not teach or suggest the limitations of claims 3, 12 and 13. Applicant respectfully requests that Examiner's rejection be withdrawn.

Claims 7, 18, 45, 50 and 56 were also rejected under 35 U.S.C. § 103 as being unpatentable over Soboleski in view of Yuan et al. (US Patent Publication No. 2005/0143818). The Examiner reasoned that Soboleski disclosed the claimed invention except for the surfaces having a porous coating and that Yuan taught fixation surfaces having porous coatings. Because Soboleski does not disclose the claimed invention except for the surfaces having a porous coating, it is submitted that in combination, Soboleski and Yuan do not teach or suggest the limitations of claims 7, 18, 45, 50 and 56. Applicant respectfully requests that Examiner's rejection be withdrawn.

***Conclusion***

This application is now in condition for allowance and an early action to that effect is earnestly solicited.

Respectfully submitted,

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